IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WA.No. 896 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.10039/2005 Dated 16/03/2007
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APPELLANT: (PETITIONERS)
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1. K.G.RAJAMOHAN NAIR, ATTENDER, KANGAZHA SERVICE CO-OPERATIVE BANK LTD.NO.1145, KANGAZHA.

2. P.H.ABDUL KARIM, ATTENDER, KANGAZHA SERVICE CO-OPERATIVE BANK LTD.NO.1145, KANGAZHA.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: (RESPONDENTS)
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, CO-OPERATIVE DEPARTMENT, THIRUVANANTHAPURAM.

2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES(GENERAL), KOTTAYAM.

3. KANGAZHA SERVICE CO-OPERATIVE BANK LTD.NO.1145, KANGAZHA P.O., PATHANAD, REPRESENTED BY ITS SECRETARY.

BY GOVERNMENT PLEADER SRI.SANDESH RAJA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.
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W.A.NO. 896 OF 2007
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Dated this the 3rd day of April, 2007

J U D G M E N T

P.R.Raman, J.

The appellants are the petitioners who filed the writ petition seeking to quash Ext.P11 Circular. At the same time, during the course of the argument, it was submitted that it is a mistake and what was actually challenged is Ext.P10. So however, the learned Single Judge has also considered the contention as against Ext.P10 only. Therefore we will proceed treating the challenge as against Ext.P10. That is an order whereunder, the 2nd respondent directed the third respondent to recover excess salary drawn by the petitioners from 1/4/99 to 1/4/2002, during which period the society which was a Special Grade Class I was down graded as Class I Soceity. The appellants were last grade employees in the Bank and Joint Registrar noticed that even after down grading the Bank to a Class I Society, payment applicable to the Special Grade Society was made to the employees. This was noticed while auditing and under orders of Joint Registrar, the excess salary was

sought to be recovered. According to the appellants even after down grading of the society, they have some protection in the matter of retaining of Higher Grade salary under Government orders, which is stated to be Circular No.47/2000 dated 22/3/2000.

2. The society on the other hand would contend that the said circular has no application and what is applicable is Circular No.16/01, which is produced as Ext.P11 in the case. The learned Single Judge thought that this is a matter to be sorted out at the Government level and in that view of the matter, recovery proceedings initiated were ordered to be kept in abeyance and petitioners were given liberty to approach the Government by filing an appeal or revision against Ext.P10 and if done, the Government was also directed to take a decision within a time frame. Against this, the present writ appeal is filed.

3. According to the learned counsel for the appellants, there was no need or necessity to relegate them to file an appeal especially when Government has already expressed their opinion by filing counter affidavit that the petitioners has no protection to be granted and justifying the action of the Joint Registrar as

evidenced by Ext.P10. In such circumstances, according to them appeal will not be an effective remedy.

4. According to the learned counsel for the appellants, the Circular No.G.O(P) No.47/2000 dated 22/3/2000 gives them the protection and he place reliance on Clause 14, to the extent it is relevant reads as follows:

> "ഈ ശബള പരിഷ്കരണ ഉത്തരവിന്റെ പരിധിയിൽ വരുന്ന സഹകരണ സംഘം ജീവനക്കാരന് അനുബന്ധം 1ൽ രേഖപ്പെടുത്തിയിരിക്കുന്ന ശബളനിരക്കുകളിലെ തൊട്ടുയർന്ന ശബള നിരക്കിലേക്ക് നിലവിലുള്ള മറ്റു വ്യവസ്ഥകൾക്കു വിധേയമായി 1.4.99 മുതൽ സമയബന്ധിത ഗ്രേഡ് പ്രമോഷന് അർഹതയുണ്ടായിരിക്കും.– –1.4.99നു മുമ്പു ഗ്രേഡ് പ്രൊമോഷൻ ലഭിച്ചവർക്ക് രജിസ്ട്രാർ നിർണ്ണയിച്ചു നല്കിയിരിക്കുന്ന ശബള നിരക്കിന് സമാനമായി പരിഷ്ക്കരിക്കപ്പെട്ട നിരക്കിനർഹതയുണ്ടായിരിക്കും."

5. It is the contention of the appellants that since they have already been given grade promotion as per Exhibits P1 and P2, they are entitled for protection as per the above clause. According to us, the said notification has no application to the present case where the question arises is as to whether a society which was a Special Grade Society and subsequently down graded as Class I and during the relevant period whether there is any protection to the salary. There is no answer to this in the

Circular now referred to by the learned counsel. No other circular is referred to in support of their contention claiming any protection. As far as Ext.P11 is concerned, the petitioners/appellants are not placing any reliance thereto. But still we find that it has some bearing as far as pay scales relating to down graded society is concerned. Ext.P11 itself states that until now there is no provision governing the scale of pay applicable to employee receiving higher scale which is subsequently down graded. On the other hand, according to them Ext.P11 will not take away their right, if any. As have already found, they have no right to claim the same salary received by them when the society was a Class I Special Grade to be continued to be paid even during the down graded period.

6. In the judgment impugned in this appeal, learned Single Judge observed that the stand of the society is that what is relevant in the present case is Ext.P11. The learned Single Judge has already stayed the recovery.

7. In the facts and circumstances of the case, we think it is appropriate to keep in abeyance the recovery proceedings pursuant to Ext.P10 and the right of the petitioner to approach

the Joint Registrar by way of representation, in case the amount as sought to be recovered under Ext.P10 is factually incorrect or contrary to Ext.P11, in which event the Joint Registrar will have a fresh look into the matter in the light of Ext.P11 and pass appropriate orders. The order of the learned Single Judge will stand modified as above. Subject to the above, the writ appeal is dismissed.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp